

INTERNAL REVENUE SERVICE

North Atlantic Region

Department of the Treasury

Address any reply to Appeals Office at:

[REDACTED]

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Refer Reply to:

[REDACTED]

Date: OCT 19 1988

Tax Years:
Application

Gentlemen:

This is our Final Adverse Determination/Ruling letter concerning your requested determination under Section 501(c)(3) of the Internal Revenue Code of 1954.

Your purposes as stated in your Certificate of Incorporation are to publish a Spanish-language literacy review entitled "[REDACTED]", the publication of Spanish-language books authored by [REDACTED] writers and the promotion of the literary endeavors of [REDACTED] Hispanic writers through poetry reading, talks and workshops.

The information submitted indicates that your activities will consist of publishing three issues of your literary magazines per year. You have lectures three or four times a year and one or two workshops a year.

The publications are sold in two ways: through subscription (\$15/individual; \$[REDACTED]/institutions) and through bookstores. The subscription rates are comparable to those of other foreign language literary journals.

The journal is advertised through mailings to Colleges and Universities, Libraries, High Schools, and members of selected Hispanic Educational and Social Organizations. The Press has been another means of advertising together with the lecture series that you sponsor. Advertising space in the journal is sold at the following rate: 1/4 page, \$[REDACTED]; 1/2 page, \$[REDACTED]; whole page, \$[REDACTED].

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations provides that in order to meet the organizational test an organization's Certificate of Incorporation must (a) limit the purposes of the organization to one or more exempt purposes; and (b) not expressly empower the organization to engage, than as an unsubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operating exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in Section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 60-351, 1960-2 C.B. 169 states, in part, that a nonprofit corporation that publishes a foreign language magazine on a subscription basis, comparable to ordinary commercial publishing practice, was held to be engaged in a trade or business rather than an educational activity.

Based upon the information you have provided it has been determined that your organization has failed to meet the organizational test since your Certificate of Incorporation fails to limit your purposes to specific Section 501(c)(3) exempt purposes and fails to provide for the permanent dedication of your assets to Section 501(c)(3) purposes.

In addition, your organization fails to meet the operational test because it has failed to provide sufficient information to determine that your purposes further the public rather than the private benefits of your member contributors. Your organization's operation also seems similar to the organization described in Revenue Ruling 60-351 (supra).

Accordingly, your organization does not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code of 1954. Therefore, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible under Section 170 of the Code.

If you decide to contest this determination under the declaratory judgement provisions of Section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaration judgement.

Sincerely,

Commissioner

By:

Associate Chief
Boston Appeals Office

Internal Revenue Service

Department of the Treasury

District
Director

Date: APR 15 1987

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

Your purposes as stated in your Certificate of Incorporation are to publish a Spanish-language literacy review entitled "[REDACTED]", the publication of Spanish-language books authored by [REDACTED] Hispanic writers and the promotion of the literary endeavors of [REDACTED] Hispanic writers through poetry reading, talks and workshops.

The information submitted indicates that your activities will consist of publishing three issues of your literary magazine per year. You have lectures three or four times a year and one or two workshops a year.

The publications are sold in two ways; through subscription (\$[REDACTED]/individual; \$[REDACTED]/institutional) and through bookstores. The subscription rates are comparable to those of other foreign language literary journals.

The journal is advertised through mailings to Colleges and Universities, Libraries, High Schools, and members of selected Hispanic Educational and Social Organizations. The Press has been another means of advertising together with the lecture series that you sponsor. Advertising space in the journal is sold at the following rate: 1/4 page, \$[REDACTED]; 1/2 page, \$[REDACTED]; whole page, \$[REDACTED].

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

A review of your Certificate of Incorporation shows that you do not meet the organizational requirements of section 501(c)(3) of the Code, since your Certificate of Incorporation does not contain the specific language required by section 501(c)(3) of the Internal Revenue Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Petter Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes. Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(d)(3) of the Regulations provides, in part, that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums and schools are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Revenue Ruling 60-351, 1960-2 C.B. 169 states, in part, that a nonprofit corporation that publishes a foreign language magazine on a subscription basis, comparable to ordinary commercial publishing practice, was held to be engaged in a trade or business rather than an educational activity.

Revenue Ruling 77-4, 1977-1 C.B. 141 states in part, that an organization whose only activities are preparing and publishing a newspaper, soliciting advertising, and selling subscriptions to that newspaper in a manner indistinguishable from ordinary commercial publishing practice is not operated exclusively for charitable and educational purposes.

The information submitted in your application, demonstrates that, like the organization described in Revenue Ruling 60-351, you will be publishing a journal in a foreign language on a subscription basis, comparable to ordinary commercial publishing practices and are held to be engaged in trade or business rather than an educational activity.

Like the organization described in Revenue Ruling 77-4, you will be preparing and publishing a journal, soliciting advertising and selling subscription to the journal in a manner indistinguishable from ordinary commercial publishing practices and are not operated exclusively for charitable and educational purposes.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the code and propose to deny your request for exemption under that section.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

A large black rectangular redaction box covering the signature and name of the official.

Enclosure: Publication 892